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No. 90-1208

**IN THE
SUPREME COURT
OF THE UNITED STATES**

OCTOBER TERM, 1990

JAMES C. PEARSON AND IDA J. PEARSON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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STATEMENT

On April 23, 1991, Respondent filed a brief in response to the Petition for Certiorari in this case. Respondent argues that the Court

should hold this petition for certiorari pending the outcome of a case in which the United States has petitioned for certiorari, *United States v. Nordic Village, Inc.*, decision below, 915 F.2d 1049 (6th Cir. 1990), petition for certiorari pending. Petitioners oppose Respondent's position, and request that the Court grant certiorari in this case while holding the *Nordic Village* case pending the outcome in this case, for the following reason.

DISCUSSION

Respondent is in error in asserting that the Ninth Circuit Court of Appeals did not decide whether Section 106(c) authorizes monetary awards against the federal government. In reality, the Ninth

Circuit notes that the plurality opinion in *Hoffman v. Dept. of Income Maintenance*, 109 S. Ct. 2818 (1989), held that Section 106(c) does not waive the states' sovereign immunity to suit from money damages. The Ninth Circuit concludes, "While *Hoffman* dealt with the eleventh amendment immunity of the states, the plurality's reasoning is equally applicable to the immunity of the United States." Contrary to Respondent's assertion, the Ninth Circuit did decide the issue whether Section 106(c) authorizes monetary judgments against the federal government, and the Ninth Circuit's decision gives rise to the preliminary issue raised in the petition for writ of certiorari.

Respondent next asserts that the Court should hold this case pending the outcome of the case in which Respondent has petitioned for a writ of certiorari, *United States v. Nordic Village, Inc.* In fact, it would be more expedient and economical for the Court to grant a writ of certiorari in this case rather than in the *Nordic Village* case.

When Respondent petitioned for a writ of certiorari in *Nordic Village*, it raised only a single issue, namely, whether Section 106(c) of the Bankruptcy Code waives the sovereign immunity of the United States from an action seeking a monetary recovery in bankruptcy. By comparison, Petitioners in the case herein have raised two issues in their petition

for a writ of certiorari. The issue of whether Section 106(c) waives the sovereign immunity of the United States from monetary damages, which is the sole issue in *Nordic Village*, is only the preliminary issue in this case. A finding by this Court that Section 106(c) does in fact waive the sovereign immunity of the United States from monetary damages would give rise to the second issue presented by the instant petition for a writ of certiorari, whether Section 106(c), when read in conjunction with Section 362, authorizes a debtor in bankruptcy to recover a money judgment against the United States for violation of an automatic stay.

By hearing the instant case, the Court could decide the Section 106(c) issue common to this case and *Nordic*

Village. Should the Section 106(c) issue be decided in a way which merits the hearing of arguments on the Section 362 issue, the decision to grant certiorari in this case rather than in *Nordic Village* would enable the Court to proceed immediately to the second issue, without the unnecessary expenditure of administrative and judicial resources required to grant certiorari in this case, to read additional briefs and to hear additional arguments on the Section 362 issue. On the other hand, should the Court determine after granting certiorari in this case that no Section 106(c) waiver of sovereign immunity exists, that decision would effectively dispose of both cases. The interests of judicial and

administrative economy would be served by granting the petition for a writ of certiorari in this case.

CONCLUSION

The petition for a writ of certiorari should be granted at this time in the interests of economizing administrative and judicial resources.

Respectfully submitted,

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June 1991